

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BRIAN J. SPINKS,

Plaintiff,

vs.

MONTANA STATE PRISON, LHU-1
FIRST SHIFT SERGEANT (name
unknown), LHU-1 SECOND SHIFT
SERGEANT (name unknown), LHU-1
THIRD SHIFT SERGEANT (name
unknown), and, LHU-1 UNIT
MANAGER,

Defendants.

CV 14-59-H-DLC-RKS

ORDER

FILED

JAN 05 2015

Clerk, U.S. District Court
District Of Montana
Missoula

United States Magistrate Judge R. Keith Strong entered Findings and Recommendations on October 23, 2014 recommending that Montana State Prison be dismissed with prejudice. Petitioner did not timely object to the Findings and Recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d

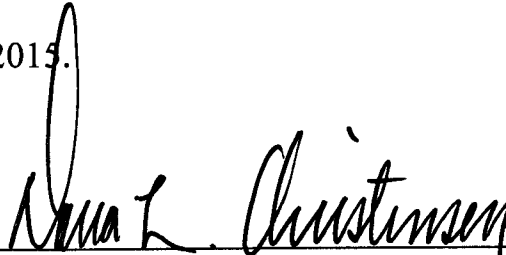
422, 427 (9th Cir. 2000). There is no clear error in Judge Strong's Findings and Recommendations.

There is no clear error in Judge Strong's finding that Montana State Prison is a state agency protected from monetary damages by immunity under the Eleventh Amendment to the United States Constitution. The United States Supreme Court has interpreted the Eleventh Amendment to mean that absent waiver, neither a State nor an agency of the State acting under its control may "be subject to suit in federal court." *Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993). Spinks does not seek prospective relief and so does not fall under that exception to the general prohibition of the Eleventh Amendment. *Idaho v. Couer d'Alene Tribe*, 521 U.S. 261 (1997).

Accordingly, IT IS ORDERED that Judge Strong's Findings and Recommendations (Doc. 12) are ADOPTED.

IT IS FURTHER ORDERED that Defendant Montana State Prison is DISMISSED WITH PREJUDICE.

Dated this 5th day of January, 2015.



Dana L. Christensen, Chief Judge
United States District Court